

ROBERT D. NININGER, APPELLANT  
PAUL C. KOHLMAN, APPELLEE

IBLA 74-204

Decided June 28, 1974

Appeal from the decision of the Bureau of Land Management's Montana State Office which dismissed appellant's protest against the issuance of oil and gas lease M-26713 to the appellee.

Affirmed.

Administrative Procedure: Generally – Oil and Gas Leases: Applications: Drawing –  
Oil and Gas Leases: Rentals – Rules of Practice: Protests

Where, after a drawing of simultaneously filed oil and gas lease offers, the authorized officer mails a notice to the successful drawee informing him of his priority and the requirement that the advance rental must be paid within the allotted time, which letter is received at his address of record, his subsequent failure to remit the rental timely will disqualify his offer even though he asserts that his absence from his address during this period made him unaware of the notice, and his protest against issuance of the lease to the qualified offeror having the next highest priority will be dismissed.

APPEARANCES: Vincent L. Gingerich, Esq., Takoma Park, Md., for the appellant; Paul C. Kohlman, appellee, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

This case finds its inception in the drawing of simultaneously-filed oil and gas lease offers for Parcel No. 10 in the drawing

conducted in November 1973 by the Montana State Office of the Bureau of Land Management. The purpose of the drawing is to establish the priority in which the offers will be considered. 43 CFR 3110.1-6.

Appellant's offer was first drawn and was accorded first priority. Appellee's offer was drawn second.

The Chief, Minerals Adjudication Section, then mailed a notice to appellant informing him of his priority and, further, that rental in the amount of \$1,278.50 must be paid within 15 days of receipt of the notice, as required by 43 CFR 3112.4-1. The notice also warned that if the rental was not received within the time allowed, the offeror would be automatically disqualified to receive the lease. This notice was sent by certified mail to appellant's address of record. The return receipt card shows that it was delivered on December 18, 1973. On the face of the card the appellant's name was written, beneath which, in the space marked "Addressee's Agent," in the same hand, is the name "Susan Nininger."

Subsequently the record was noted, "Rental not received. No action. Case closed. 1-9-74;" and the notation was initialed. On January 10, 1974, the Chief, Minerals Adjudication sent a notice to Paul C. Kohlman, the appellee, advising that his offer had been drawn second and that upon receipt of the first year's rental within 15 days he would be qualified to receive the lease. Kohlman made the remittance on January 17, 1974.

However, appellant had, on January 7, 1974, delivered a check in the amount of \$1,278.50 to the Montana State Office. The Acting Chief then wrote to him explaining that the rental was due not later than January 2, 1974, that it could not be accepted, and that a refund of the money would be made.

Appellant, by his attorney, next filed a protest in the Montana State Office, alleging that when his notice was delivered he was away on vacation; that it did not come to his attention until January 4; that Susan Nininger, who received it at his address was neither his agent nor a member of his household; and that she had merely left the notice with the other mail received that day.

By decision dated January 16, 1974, the Montana State Office dismissed Nininger's protest, from which action he has brought this appeal.

Appellant's allegations on appeal are substantially the same as those advanced in support of his protest. He argues that a

computation of elapsed time from the date when Susan Nininger received the notice is a violation of due process because Susan Nininger is not his agent to receive his mail or to sign his name.

The appellee has filed a reply in which he points out that the provisions of 43 CFR 3112.4-1, which require disqualification are printed on the official Notice of Lands Available for Oil and Gas Filings. Moreover, he states that the regulations clearly state that the State Office should not have granted Nininger the right to appeal, although he does not identify the regulations to which he refers.

The State Office acted correctly in disqualifying Nininger, in dismissing his protest, and in recognizing Kohlman's priority. As noted in the decision below, the situation is covered by regulation, 43 CFR 810.2(b), which provides:

(b) Where the authorized officer uses the mails to send a notice or other communication to any person entitled to such a communication under the regulations of this chapter, the person will be deemed to have received the communication if it was delivered to his last address of record in the appropriate office of the Bureau of Land Management, regardless of whether it was in fact received by him. An offer of delivery which cannot be consummated at such last address of record because the addressee had moved therefrom without leaving a forwarding address or because delivery was refused or because no such address exists will meet the requirements of this section where the attempt to deliver is substantiated by post office authorities.

The regulation is reasonable and necessary to expeditious administration. The conduct of Government business cannot be made to await the pleasure or convenience of those individuals who seek to treat with it, nor should federal employees have to search out those individuals who have neglected to arrange their own affairs so that they might receive official communication promptly. The failure of the recipient to advise the lessee that the rental notice had arrived is not justification for a late payment. See Norman K. Husted, 12 IBLA 341 (1973).

The disqualification of appellant's offer for failure to submit the advance lease rental within 15 days of the delivery

of the notice to his address of record was mandatory under 43 CFR 3112.4-1, as was the subsequent consideration of appellee's offer. See Warwick M. Downing, 60 I.D. 433 (1950).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Edward W. Stuebing  
Administrative Judge

We concur

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Joan B. Thompson  
Administrative Judge

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Douglas E. Henriques  
Administrative Judge

